

REMARKS

In the outstanding Office Action, the *Declaration* was objected to. Enclosed are substitute *Declarations* which are believed to comply with the applicable rules. If any fees are due in connection with filing the *Declarations* or in connection with filing this response, please charge Deposit Account No. 50-0935. If any extensions of time are required, please consider this a Petition therefore and charge Deposit Account No. 50-0935.

The claims were rejected under 35 USC §112 as follows:

Claim Rejections – 35 USC § 112

Claims 1-14 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term “non-digestible” is indefinite, as it is unclear within whom this is to be non-digestible. Many oligosaccharides which cannot be digested by humans, can be broken down by other animals, bacteria, etc.

The liquid in which the oligosaccharide of the claims is to be “soluble”, is unclear. See at least claims 1, 14, 20.

The term “significant” in claims 1 and 20, is a relative term which renders the claim indefinite. The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claims 1, 14 and 20, the phrases “contribute substantially stabilized sweetness to said beverage over time” (claims 1 and 20) and “stabilized sweeteners and extended shelf life” (claims 1 and 14) are unclear for the following reasons.

- The terms “stabilized”, and “stabilized... over time”, are indefinite, in part because the conditions against which the sweetness (or sweetener) is stabilized, are unclear.
- It is unclear as to what properties and conditions play a role in the de-stabilization of the sweetener, especially since the original oligosaccharide “undergoes significant hydrolysis within about 4 weeks”.
- The period of time over which the stabilized sweetness is “contributed” (or extended), is unclear. It is unclear if the period of time refers to the stabilization of the sweetener, or to the property of “sweetness” itself.
- The term “extended shelf life” is rejected for reasons similar to those listed immediately above. The term “extended” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite

degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

- In claim 1, the phrase "substantially stabilized sweetness" is a relative phrase which renders the claim indefinite, due to the term "substantially". The term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.
- The intended, functional and/or practical difference between the recitation in claims 1 and 20 of "stabilized sweetness", and "stabilized sweetener" of claim 14 is unclear. While a sweetener is a physical compound, the term "sweetness" is a descriptive characteristic property.

It is suggested that claim 5 be amended to recite the phrase "further comprises, as phosphoric acid is already described in claim 4, from which it depends.

Claim 10 is indefinite for the recitation of the phrase "wherein the oligosaccharide is inulin." Initially, the claim is dependent upon claim 8, which states that the "oligosaccharide comprises hexose or pentose monosaccharide units". However, inulin is made of almost entirely oligofructose (aka fructooligosaccharides), and is not stated in the specification to "comprise hexose or pentose monosaccharide units." One might then be led to believe claim 10 should depend from claim 9; however, reference to the specification at page 7, line 9, shows that "a distinction is made between inulin and oligofructose", i.e. inulin comprises oligofructose, but is not oligofructose, *per se*.

Similarly, claim 15 appears to improperly extend the limitations of claim 14 from which it depends, as "oligofructose" is not one of the recited options in part (e) of claim 15.

Part (e) of claim 14 is indefinite and confusing, as it is unclear if both the inulins and the fructans are to have the recited caloric value, or only the fructans. It is suggested that the claim be amended to state that "wherein each [or "wherein both"] of said inulins and fructans...".

Claims 17-19 are indefinite. Claims 17-18 recite "said high intensity sweetener composition", whereas a "composition:" is not found in claim 14, from which they depend. Rather, the sweetener compound alone is recited. To this point, claims 18-19 are indefinite, as they recite a high intensity sweetener of both aspartame and acesulfame K, whereas claim 14, part (d) provides for "a" single high intensity sweetener.

Claim 10 is indefinite for the recitation of the phrase "hydrolysis by about 0.5-50 per cent by weight of said oligosaccharide." It is unclear as to what is intended by the phrase, whether (a) 0.5-50 percent (by weight) of the oligosaccharides are to undergo hydrolysis, (b) the total amount of oligosaccharides are hydrolyzed to 0.5-50 percent of their original weight, or (c) some other interpretation.

The claims have been amended to comply with the Examiner's remarks. Support for the terminology "fiber" can be found on page 8 of the application as filed. Claim 15 is believed definite since oligofructose is defined as an oligosaccharide on page 11, Table 1. Claim 20 refers to hydrolysis of the recited fiber and is believed, as amended, most definite.

Claims 1-3, 6, 8-12, 14-18 and 20 were rejected under 35 USC §102(a) over *Admiraal et al.* In view of the priority of this case, March, 1998, *Admiraal et al.* is not a reference since it did not publish until May, 1998. The rejection should therefore be withdrawn in view of the amended claim for priority and new *Declarations* which claim the March, 1998 priority date of this application..

Claims 1-20 have been rejected under 35 USC §103(a) as being unpatentable over *Mitchell* and *Wiedmann et al.* in view of *Yatka et al.* and *Nakel et al.* *Mitchell* is directed to a stabilization process for use of aspartame to prepare baked goods. Prior to *Mitchell*'s process aspartame decomposed at temperatures used in making baked goods. *Wiedmann et al.* discloses various sweetener compositions. *Yatka et al.* discloses that oligofructose stabilizes aspartame in chewing gum. *Nakel et al.* teaches the production of beverage supplements with calcium.

It is believed that the combination of the four cited references do not render obvious Applicants' Claims 1-20 which relate to an acidified beverage comprising:

- (a) water;
- (b) an edible acid component present in an amount suitable to maintain the pH of the beverage between 3 and 6;
- (c) one or more high intensity peptide sweeteners; and
- (d) a water soluble oligosaccharide fiber which within about 4 weeks hydrolyzes significantly to sweeten the beverage.

In Applicants' invention the beverage is sweetened by the hydrolyzed oligosaccharide as the peptide sweetener degrades. The monomeric hydrolyzed components of the oligosaccharides are much sweeter than the oligosaccharides themselves, and therefore the loss of sweetness due to the degradation of peptide sweetener is compensated for. Accordingly, the target sweetness of the beverage is relatively constant, or stabilized, over time. There is no suggestion in the art of this discovery, which is applicable to acidified beverages in particular. Thus, the claimed subject matter is believed patentable.

Claims 4-5, 7, 13 and 19 are rejected under 35 USC §103(a) as unpatentable over *Admiraal et al.* As stated above, *Admiraal et al.* is not a reference and this rejection should be withdrawn as well.

In view of the foregoing amendments and, the amended claims are believed in a condition for allowance and such action is respectfully solicited.

If for any reason the Examiner would like to discuss this case, the Examiner is invited to call at the number listed below.

Respectfully submitted,

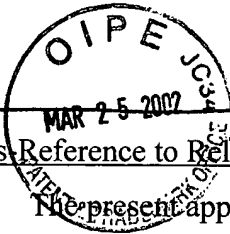


Michael W. Ferrell – Reg. No. 31,158
Attorney for Applicant

Ferrell & Ferrell L.L.P.
90 Crystal Run Road, Suite 401
Middletown, New York 10941
Telephone: (703) 266-3000
Facsimile: (703) 266-6000
March 15, 2002

ANNEX A

(clean version to changes on page 1 of the specification)



Cross Reference to Related Application

Al The present application is a continuation-in-part of United States Patent Application Serial No. 09/186,275, of *J. Aldrich et al.* for "Sweet-Stable Acidified Beverages", filed November 5, 1998, which was based upon Provisional Application Serial No. 60/079,408, filed March 26, 1998. The priority of the foregoing applications is hereby claimed.

RECEIVED
MAR 28 2002
TC 1700

ANNEX B

(marked-up version to changes on page 1 of the specification)

Cross-Reference to Related Application

The present application is a continuation-in-part patent of United States Patent Application Serial No. 09/186,275, of *J. Aldrich et al.* for "Sweet-Stable Acidified Beverages", filed November 5, 1998, ~~the priority of which is claimed,~~which was based upon Provisional Application Serial No. 60/079,408, filed March 26, 1998. The priority of the foregoing applications is hereby claimed.

APPENDIX A
(clean version of Claims 1, 5, 9, 10, 11, 14 and 20)

1. (Amended) An acidified beverage comprising:

(a) water;

(b) an edible acid component present in an amount suitable to maintain the pH of the beverage in the range of from about 3 up to less than about 6;

(c) at least one high intensity peptide sweetener; and

(d) a water-soluble oligosaccharide fiber which undergoes at least partial hydrolysis within about 4 weeks at ambient conditions within the aforesaid pH range and the hydrolyzed units of which sweeten said beverage.

5. (Amended) The beverage according to Claim 4, wherein said acid component further comprises citric acid.

9. (Amended) The beverage according to Claim 1, wherein the oligosaccharide is oligofructose.

10. (Amended) The beverage according to Claim 1, wherein the oligosaccharide is inulin.

11. (Amended) The beverage according to Claim 1, wherein said peptide sweetener is aspartame.

14. (Amended) An acidified beverage comprising:

(a) water;

- (b) a flavor component selected from the group consisting of tea flavor and cola flavor;
- (c) an edible acid component present in an amount suitable to maintain the pH of the beverage in the range of from about 3 to about 4;
- ~~AB~~
b₂ (d) a peptide high intensity sweetener composition;
- (e) a water-soluble oligosaccharide fiber selected from the group consisting of inulins and fructans, said inulins and fructans having a caloric value of less than about 5 Kcal/g.
-

~~AB~~ 20. (Amended) The beverage according to Claim 1, wherein said water-soluble oligosaccharide fiber undergoes hydrolysis by about 0.5-50 per cent by weight of said oligosaccharide fiber within about four (4) weeks at ambient conditions within the pH range of 3 to 4 and the hydrolyzed units of which sweeten said beverage.

APPENDIX B

(marked-up version of Claims 1, 5, 9, 10, 11, 14 and 20)

1. (Amended) An acidified beverage ~~with stabilized sweeteners and extended shelf life comprising:~~

(a) water;

(b) an edible acid component present in an amount suitable to maintain the pH of the beverage in the range of from about 3 up to less than about 6;

(c) at least one high intensity peptide sweetener; and

(d) a ~~soluble non-digestible~~ water-soluble oligosaccharide fiber which undergoes significant at least partial hydrolysis within about 4 weeks at ambient conditions within the aforesaid pH range and the hydrolyzed units of which ~~contribute substantially stabilized sweetness to sweeten~~ said beverage ~~over time~~.

5. (Amended) The beverage according to Claim 4, wherein said acid component further comprises citric acid.

9. (Amended) The beverage according to Claim ~~8~~1, wherein the oligosaccharide is oligofructose.

10. (Amended) The beverage according to Claim ~~11~~1, wherein the oligosaccharide is inulin.

11. (Amended) The beverage according to Claim ~~11~~1, wherein said peptide sweetener is aspartame.

14. (Amended) An acidified beverage ~~with stabilized sweeteners and extended shelf life comprising:~~

(a) water;

- (b) a flavor component selected from the group consisting of tea flavor and cola flavor;
- (c) an edible acid component present in an amount suitable to maintain the pH of the beverage in the range of from about 3 to about 4;
- (d) a peptide high intensity sweetener composition;
- (e) a water-soluble non-digestible-oligosaccharide fiber selected from the group consisting of inulins and fructans, said inulins and fructans having a caloric value of less than about 5 Kcal/g.

20. (Amended) The beverage according to Claim 1, wherein said water-soluble oligosaccharide fiber undergoes ~~significant~~ hydrolysis by about 0.5-50 per cent by weight of said oligosaccharide fiber within about four (4) weeks at ambient conditions within the pH range of 3 to 4 and the hydrolyzed units of which ~~contribute stabilized sweetness to~~ sweeten said beverage ~~over time~~.